

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ALFREIDA K. HAYES)	
Claimant)	
VS.)	
)	Docket Nos. 230,784 & 230,785
RAYTHEON AIRCRAFT COMPANY)	
Respondent)	
Self-Insured)	

ORDER

Respondent appealed the March 17, 1998, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge awarded claimant temporary total disability and medical benefits for a November 22, 1997, work-related back injury. Respondent contends the Administrative Law Judge erred by considering a medical report that was not attached to claimant's application for preliminary hearing and that claimant failed to prove she injured her back at work. The issues before the Appeals Board are:

- (1) Did claimant sustain personal injury by accident to her back that arose out of and in the course of her employment with respondent?
- (2) Did the Administrative Law Judge err by admitting into evidence and considering a medical report that was not attached to the preliminary hearing application?
- (3) Did the Administrative Law Judge err by awarding claimant temporary total disability benefits and appointing Dr. Murati as the authorized treating physician?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For purposes of preliminary hearing, the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

(1) The Appeals Board adopts the Administrative Law Judge's finding and conclusion that claimant injured her back while working for the respondent. The Administrative Law Judge had the opportunity to personally observe claimant testify and assess her demeanor and credibility. Claimant's testimony is credible and persuasive that on November 17, 1997, she started performing different job duties as a hydraulic rigger that required her to work in various awkward positions and climb a hill while carrying numerous tools. And on November 19, 1997, she began to experience back symptoms that progressively worsened over the next three days.

(2) The Administrative Law Judge did not err by admitting into evidence Dr. Murati's February 23, 1998, medical report. The Appeals Board has previously determined that an administrative law judge has the discretion to either accept or exclude records and reports that were not attached to the application for preliminary hearing. Sulaimon v. Woodland Health Center, Docket No. 192,021 (Sept. 1995).

The Legislature did not intend to bind the administrative law judges by technical rules of procedure. Rather, it desired expeditious and impartial hearings. K.S.A. 1997 Supp. 44-523.

(3) The Appeals Board does not have the authority or jurisdiction to review the Judge's orders of temporary total disability and medical benefits under either K.S.A. 1997 Supp. 44-534a or K.S.A. 1997 Supp. 44-551.

The Judge had the authority to order temporary total disability and medical benefits pursuant to the preliminary hearing statute, K.S.A. 1997 Supp. 44-534a. Further, the Appeals Board has ruled on numerous occasions that an administrative law judge has the authority to appoint a treating physician when the respondent has failed or refused to. This is not a request for change of physician under K.S.A. 1997 Supp. 44-510(c)(1) and, therefore, the Judge is not required to permit respondent to submit the names of three health care providers from which claimant would select a new provider.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated March 17, 1998, entered by Administrative Law Judge John D. Clark is affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Jeff C. Spahn, Jr., Wichita, KS

ALFREIDA K. HAYES

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John D. Clark, Administrative Law Judge
Philip S. Harness, Director